

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

UNITED STATES OF AMERICA,) CR-18-00258-EJD
)
PLAINTIFF,) SAN JOSE, CALIFORNIA
)
VS.) MARCH 29, 2022
)
RAMESH "SUNNY" BALWANI,) VOLUME 10
)
DEFENDANT.) PAGES 1382 - 1443
) **SEALED 1391 - 1441**

TRANSCRIPT OF TRIAL PROCEEDINGS
BEFORE THE HONORABLE EDWARD J. DAVILA
UNITED STATES DISTRICT JUDGE

A P P E A R A N C E S:

FOR THE PLAINTIFF: UNITED STATES ATTORNEY'S OFFICE
BY: JOHN C. BOSTIC
JEFFREY B. SCHENK
150 ALMADEN BOULEVARD, SUITE 900
SAN JOSE, CALIFORNIA 95113

BY: ROBERT S. LEACH
1301 CLAY STREET, SUITE 340S
OAKLAND, CALIFORNIA 94612

(APPEARANCES CONTINUED ON THE NEXT PAGE.)

OFFICIAL COURT REPORTER:
IRENE L. RODRIGUEZ, CSR, RMR, CRR
CERTIFICATE NUMBER 8074

PROCEEDINGS RECORDED BY MECHANICAL STENOGRAPHY
TRANSCRIPT PRODUCED WITH COMPUTER

A P P E A R A N C E S: (CONT'D)

FOR DEFENDANT BALWANI: ORRICK, HERRINGTON & SUTCLIFFE LLP
BY: MOLLY MCCAFFERTY

SHAWN ESTRADA
THE ORRICK BUILDING
405 HOWARD STREET
SAN FRANCISCO, CALIFORNIA 94105

BY: JEFFREY COOPERSMITH
AARON BRECHER
AMANDA MCDOWELL
701 FIFTH AVENUE, SUITE 5600
SEATTLE, WASHINGTON 98104

BY: STEPHEN CAZARES
77 SOUTH FIGUEROA STREET, SUITE 3200
LOS ANGELES, CALIFORNIA 90017

BY: AMY WALSH
51 W 52ND STREET
NEW YORK, NEW YORK 10019

ALSO PRESENT: UNITED STATES ATTORNEY'S OFFICE
BY: CASEY BOOME
450 GOLDEN GATE AVENUE
SAN FRANCISCO, CALIFORNIA 94102

OFFICE OF THE U.S. ATTORNEY
BY: MADDI WACHS, PARALEGAL
SARA SLATTERY, PARALEGAL

UNITED STATES POSTAL INSPECTION SERVICE
BY: CHRISTOPHER MCCOLLOWS

FEDERAL BUREAU OF INVESTIGATION
BY: MARIO C. SCUSSEL

UNITED STATES FOOD & DRUG
ADMINISTRATION
BY: GEORGE SCAVDIS

1 SAN JOSE, CALIFORNIA

MARCH 29, 2022

2 P R O C E E D I N G S

10:07AM 3 (COURT CONVENED AT 10:07 A.M.)

10:07AM 4 (JURY OUT AT 10:07 A.M.)

10:07AM 5 THE COURT: LET'S CALL OUR MORNING MATTER 18-258,
10:07AM 6 UNITED STATES VERSUS RAMESH BALWANI.

10:07AM 7 LET ME HAVE THE APPEARANCES OF THE PARTIES, PLEASE.

10:07AM 8 MR. LEACH: GOOD MORNING, YOUR HONOR.

10:07AM 9 ROBERT LEACH FOR THE UNITED STATES.

10:07AM 10 I'M JOINED BY JOHN BOSTIC AND JEFF SCHENK AT COUNSEL TABLE
10:07AM 11 ALONG WITH POSTAL INSPECTOR CHRISTOPHER MCCOLLOWS.

10:07AM 12 I ALSO WANTED TO INTRODUCE CASEY BOOME WHO IS IN THE FIRST
10:07AM 13 ROW OF THE GALLERY.

10:07AM 14 THE COURT: GOOD MORNING.

10:07AM 15 MR. LEACH: I THINK THE COURT MET HIM BY VIDEO AT
10:07AM 16 SOME POINT, BUT HE'S ALSO HERE IN ATTENDANCE TODAY.

10:08AM 17 THE COURT: THANK YOU. GOOD MORNING EVERYONE.

10:08AM 18 MS. WALSH: GOOD MORNING, YOUR HONOR.

10:08AM 19 AMY WALSH ON BEHALF OF MR. BALWANI.

10:08AM 20 I'M JOINED BY JEFF COOPERSMITH, STEPHEN CAZARES, AND
10:08AM 21 MR. BALWANI IS IN THE COURTROOM.

10:08AM 22 I'M JOINED BY OTHER COLLEAGUES FROM ORRICK TODAY.

10:08AM 23 THE COURT: THANK YOU. GOOD MORNING.

10:08AM 24 THIS IS A DATE AND TIME SET FOR HEARING ON CERTAIN
10:08AM 25 MOTIONS.

10:08AM 1 I DO HAVE A PRELIMINARY QUESTION TO ASK COUNSEL, HOWEVER.
10:08AM 2 EXCUSE ME.

10:08AM 3 I'VE REVIEWED THE PLEADINGS IN THIS MATTER, INCLUDING
10:08AM 4 PLEADINGS THAT WERE SEALED, SOME OTHER DOCUMENTS.

10:08AM 5 MY QUESTION FOR YOU BEFORE WE BEGIN IN EARNEST DISCUSSING
10:08AM 6 THE ISSUES TODAY, I'M CURIOUS WHETHER OR NOT OUR DISCUSSION IS
10:08AM 7 NECESSARILY GOING TO INCLUDE DISCUSSION OF OTHER MATTERS THAT
10:08AM 8 ARE EITHER SEALED THEMSELVES OR IN REGARDS TO OTHER
10:08AM 9 INVESTIGATIONS THAT MIGHT BE OTHERWISE INAPPROPRIATE FOR THE
10:09AM 10 PUBLIC DISCLOSURE AT THIS TIME BECAUSE IT COVERS POTENTIALLY
10:09AM 11 GRAND JURY MATTERS, AND AS WE ALL KNOW, MATTERS BEFORE THE
10:09AM 12 GRAND JURY ARE PRIVATE AND PRIVILEGED?

10:09AM 13 MR. LEACH.

10:09AM 14 MR. LEACH: YOUR HONOR, I HAD THE SAME THOUGHTS IN
10:09AM 15 ADVANCE. I WAS PREPARED TODAY TO DO THE BEST I CAN WITH MY
10:09AM 16 COMMENTS TO NOT TALK ABOUT THE DETAILS OF SEALED PROCEEDINGS,
10:09AM 17 BUT AS THE COURT KNOWS, WE SUBMITTED OUR OPPOSITION ENTIRELY
10:09AM 18 UNDER SEAL BECAUSE IT DOES DISCUSS OTHER FILINGS THAT ARE UNDER
10:09AM 19 SEAL AND MATTERS THAT THE GOVERNMENT DOESN'T ORDINARILY TALK
10:09AM 20 ABOUT IN THE COURSE OF AN INVESTIGATION.

10:09AM 21 SO I DEFER TO THE COURT. WHATEVER THE COURT THINKS IS
10:09AM 22 APPROPRIATE. I CAN KEEP MY COMMENTS AS HIGH LEVEL AS POSSIBLE
10:09AM 23 TO AVOID UNNECESSARILY GETTING INTO SOME OF THE DETAILS THAT
10:09AM 24 MIGHT ANIMATE THOSE CONCERNS.

10:10AM 25 SO I DEFER TO THE COURT ON WHAT IT THINKS WE SHOULD DO.

10:10AM 1 THE COURT: MS. WALSH, DO YOU WANT TO BE HEARD ON
10:10AM 2 THIS?

10:10AM 3 MS. WALSH: YES, YOUR HONOR.

10:10AM 4 WE ALSO DEFER TO THE COURT ON THIS ISSUE.

10:10AM 5 THE COURT SHOULD KNOW THAT DURING THE COURSE OF ARGUMENT I
10:10AM 6 WILL BE TALKING ABOUT EMAILS THAT WERE SENT ABOUT THE
10:10AM 7 INVESTIGATION. I'LL LIKELY BE QUOTING FROM A TRANSCRIPT THAT
10:10AM 8 WAS SEALED. SO IF THAT INFORMS THE COURT'S DECISION MAKING, I
10:10AM 9 JUST WANT TO LET THE COURT KNOW.

10:10AM 10 THE COURT: ALL RIGHT. WELL, THANK YOU.

10:10AM 11 AND I LOOK AT THIS, THE ISSUES THAT ARE CONCERNED HERE,
10:10AM 12 THEY DO SEEM TO OVERLAP AND INTERTWINE INTIMATELY WITH OTHER
10:10AM 13 PROCEEDINGS THAT ARE SECRET.

10:10AM 14 FOR EXAMPLE, WE ALL KNOW GRAND JURY PROCEEDINGS ARE
10:10AM 15 SECRET, AND I WANT TO HEAR FROM YOU ABOUT THESE MATTERS.

10:10AM 16 OF COURSE, NOT EVERYTHING IN THESE PLEADINGS COVERED IS
10:11AM 17 SECRET AND PRIVILEGED.

10:11AM 18 THE COURT IS OF THE MIND THAT FOR ME TO RECEIVE YOUR
10:11AM 19 ARGUMENTS AS FULSOME AS YOU WANT ME TO HEAR THEM, IT IS GOING
10:11AM 20 TO REQUIRE, I BELIEVE -- I AM GOING TO ASK QUESTIONS THAT MIGHT
10:11AM 21 FOCUS ON SOME OF THESE OTHER PROCEEDINGS THAT ARE INAPPROPRIATE
10:11AM 22 FOR A PUBLIC SETTING.

10:11AM 23 I DO THINK THAT IT WOULD BE INCONVENIENT, IT WOULD
10:11AM 24 INTERRUPT THE PROCESS FOR ME TO CLOSE THE COURTROOM EVERY TIME
10:11AM 25 I ASK A QUESTION AND THEN REOPEN IT AGAIN.

1 I DO WANT TO PROVIDE ACCESS, OF COURSE, TO THE PUBLIC FOR
2 THESE PROCEEDINGS AS BEST WE CAN.

3 THERE IS SOME TENSION BETWEEN PROTECTING THOSE MATTERS
4 THAT ARE SECRET BY LAW AND ALLOWING ACCESS TO THE PUBLIC, WHICH
5 THEY HAVE A RIGHT TO HAVE.

6 LET ME ASK YOU TO DO THIS, IF IT'S POSSIBLE FOR YOU AND IF
7 YOU WISH, TO GIVE JUST A BRIEF SUMMARY, A NONPRIVILEGE,
8 NONSECRET I'LL CALL IT, IF YOU CAN TOUCH ON TOPICS THAT ARE NOT
9 OTHERWISE INAPPROPRIATE FOR PUBLIC CONSUMPTION.

10 AND I ASK YOU TO DO THIS TO INFORM ME, BUT ALSO TO MAKE A,
11 AS BEST YOU CAN, A RECORD FOR ANY MEMBERS OF THE PUBLIC WHO ARE
12 HERE AS TO WHAT YOU THINK WE SHOULD TALK ABOUT IN A
13 NONPRIVILEGE MANNER.

14 AND I'LL THEN -- MY INTENT IS TO THEN SEAL THE COURTROOM.

15 MR. LEACH, DO YOU AGREE WITH THAT?

16 MR. LEACH: YES, YOUR HONOR.

17 THE COURT: CAN YOU DO THAT DO YOU THINK?

18 MR. LEACH: I THINK THAT'S FAIR, AND I UNDERSTAND
19 THE COURT'S RULING.

20 THE DISCUSSION WOULD INCLUDE MATTERS --

21 THE COURT: I'M SORRY. LET ME JUST ASK MS. WALSH,
22 IS THAT ALL RIGHT WITH YOU, MS. WALSH?

23 MS. WALSH: I THINK SO, YOUR HONOR.

24 IT MAY BE HARD TO STOP FROM THE HIGH LEVEL, NONSECRET
25 MATERIAL TO DELVING INTO THE DETAILS, BUT I WILL TRY MY BEST TO

10:12AM 1 DO THAT.

10:12AM 2 THE COURT: WELL, I'M NOT ASKING FOR YOUR ARGUMENTS
10:13AM 3 NOW.

10:13AM 4 MS. WALSH: OH, I SEE.

10:13AM 5 THE COURT: BUT WHAT I WOULD LIKE TO HAVE YOU DO IS
10:13AM 6 BASICALLY GIVE A -- LET ME CALL IT THIS, AND I MEAN NO
10:13AM 7 DISRESPECT, A PUBLIC PREAMBLE, A PUBLIC DISCUSSION OF WHAT YOU
10:13AM 8 THINK OUR HEARING WILL BE ABOUT TODAY, WITHOUT GOING INTO
10:13AM 9 DETAILS, TO THE EXTENT THAT YOU CAN.

10:13AM 10 IF YOU CAN'T, YOU JUST TELL ME YOU CAN'T, AND THAT'S FINE.
10:13AM 11 BUT I JUST WANT TO GIVE YOU AN OPPORTUNITY TO DO THAT.

10:13AM 12 MR. LEACH.

10:13AM 13 MR. LEACH: THE DISCUSSION FROM THE GOVERNMENT'S
10:13AM 14 PERSPECTIVE, YOUR HONOR, WOULD INVOLVE SPECIFIC INVESTIGATORY
10:13AM 15 STEPS IN AN ONGOING GOVERNMENT INVESTIGATION; IT WOULD INCLUDE
10:13AM 16 A DISCUSSION OF A NUMBER OF SEALED FILINGS RELATING TO THOSE
10:13AM 17 INVESTIGATIVE STEPS; IT WOULD INVOLVE DISCUSSION OF POTENTIALLY
10:13AM 18 PRIVILEGE MATERIAL WHERE THERE'S AN ONGOING DISPUTE ABOUT THE
10:13AM 19 EXTENT OF THE PRIVILEGE AND THE ONGOING GOVERNMENT'S REVIEW,
10:13AM 20 ALL OF WHICH ARE APPROPRIATELY SEALED IN CERTAIN CIRCUMSTANCES,
10:14AM 21 AND IT'S VERY DIFFICULT TO DISENTANGLE THAT FROM SOME OF THE
10:14AM 22 SUBSTANTIVE RELIEF THAT THE DEFENDANT IS SEEKING HERE.

10:14AM 23 THE COURT: OKAY. THANK YOU.

10:14AM 24 MS. WALSH.

10:14AM 25 MS. WALSH: SAME FROM THE DEFENSE, YOUR HONOR. WE

1 WOULD GO INTO THE SAME TYPES OF MATERIALS, AND IT WOULD BE
2 DIFFICULT TO DISENTANGLE.

3 THE COURT: OKAY. AND THAT WOULD BE WHAT THIS
4 COURSE OF OUR DECISION WOULD BE REGARDING YOUR MOTIONS TODAY OR
5 YOUR MOTION, MS. WALSH?

6 MS. WALSH: CORRECT. YES, YOUR HONOR.

7 THE COURT: ALL RIGHT. THANK YOU.

8 I APPRECIATE YOU AUGMENTING THE RECORD FOR THE BENEFIT OF
9 THE RECORD AND ANY PUBLIC MEMBERS THAT ARE PRESENT.

10 I DO, AFTER LOOKING AT THE PLEADINGS HERE, AFTER HEARING
11 FROM YOU THIS MORNING, IT -- THE COURT FINDS THAT AT THIS TIME
12 IT'S APPROPRIATE FOR THE COURT AND REQUIRED OF THE COURT TO
13 SEAL THESE PROCEEDINGS AND THE TRANSCRIPT NECESSARILY BECAUSE
14 OUR CONVERSATIONS ARE GOING TO COVER PRIVILEGE MATERIALS,
15 MATTERS ABOUT POTENTIAL OTHER INVESTIGATIONS THAT MIGHT HAVE --
16 MIGHT BE UNDER SECRECY, GRAND JURY MATTERS AND THOSE TYPES OF
17 THINGS, AND THOSE ARE INAPPROPRIATE FOR PUBLIC CONSUMPTION. AS
18 WE KNOW, THERE'S PROTECTED, PROTECTED MATTERS THERE.

19 SO I AM AT THIS TIME GOING TO FIND THAT IT IS APPROPRIATE
20 TO SEAL THE COURTROOM AND SEAL THE TRANSCRIPT FROM HERE ON.
21 THE TRANSCRIPT IS SEALED.

22 I'LL ASK ANY MEMBERS OF THE PUBLIC WHO ARE PRESENT TO
23 LEAVE THE COURTROOM. MY COURTROOM DEPUTY WILL ASSIST YOU IN
24 THAT REGARD, AND I APPRECIATE YOUR COOPERATION AND RECOGNITION
25 OF THE COURT'S ORDER AND THE BASIS FOR IT.

10:15AM 1 LET ME SAY I DON'T KNOW HOW LONG THIS HEARING WILL LAST.
10:15AM 2 AT SOME POINT IN TIME THE COURT MAY UNSEAL THE PROCEEDINGS AND
10:16AM 3 OPEN THEM TO THE PUBLIC. I JUST DON'T KNOW HOW LONG THAT WILL
10:16AM 4 BE AND HOW LONG THIS CONVERSATION WILL TAKE PLACE, BUT WHEN
10:16AM 5 APPROPRIATE, THE COURT WILL TAKE APPROPRIATE ACTION.

10:15AM 6 **(SEALED PROCEEDINGS PAGES 1391 - 1441.)**

7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

10:15AM 1 ///

11:32AM 2 (OPEN COURT PROCEEDINGS.)

11:33AM 3 THE COURT: THANK YOU. WE'RE BACK ON THE RECORD.
11:33AM 4 THE COURT HAS OPENED THE COURTROOM AND UNSEALED THE
11:33AM 5 PROCEEDINGS.

11:33AM 6 I WANT TO THANK ANY MEMBER OF THE PUBLIC WHO HAS ENTERED.
11:33AM 7 THANK YOU FOR THEIR PATIENCE AND HOPEFULLY THEIR RECOGNITION
11:33AM 8 THAT THERE ARE MATTERS THAT THE COURT MUST TAKE OUTSIDE OF THE
11:33AM 9 PRESENCE OF THE PUBLIC IF THEY TOUCH ON OTHER CONFIDENTIAL
11:33AM 10 MATTERS, INCLUDING OTHER INVESTIGATIONS, OTHER TESTIMONY, OTHER
11:33AM 11 SEALED DOCUMENTS, AND THAT'S WHAT THE COURT DID HERE.

11:33AM 12 THE COURT HAS NOW OPENED THE PROCEEDINGS.

11:33AM 13 LET ME ASK, MR. LEACH, ANYTHING FURTHER, SIR, IN REGARDS
11:33AM 14 TO YOUR POSITION ON THE MOTION?

11:33AM 15 MR. LEACH: NO, YOUR HONOR.

11:33AM 16 THE COURT: MS. WALSH?

11:33AM 17 MS. WALSH: NO, YOUR HONOR.

11:33AM 18 THE COURT: ALL RIGHT. THANK YOU.

11:33AM 19 LET ME INDICATE THE COURT IS GOING TO, WITH COUNSEL'S
11:34AM 20 ASSISTANCE, REVIEW THE TRANSCRIPT OF THE HEARING HERE, AND THE
11:34AM 21 COURT ANTICIPATES THAT IT WILL, AFTER REVIEWING THE TRANSCRIPT
11:34AM 22 AND MAKING ANY NECESSARY REDACTIONS TO PRESERVE THE
11:34AM 23 CONFIDENTIALITY THAT I SPOKE OF EARLIER, THE COURT INTENDS TO
11:34AM 24 MAKE THE TRANSCRIPT WITH THOSE REDACTIONS PUBLIC AND AVAILABLE
11:34AM 25 FOR PUBLIC ACCESS.

11:34AM 1 ANY OBJECTION TO THAT, MR. LEACH?

11:34AM 2 MR. LEACH: NO, YOUR HONOR.

11:34AM 3 THE COURT: MS. WALSH?

11:34AM 4 MS. WALSH: NO, YOUR HONOR.

11:34AM 5 THE COURT: ALL RIGHT. THANK YOU VERY MUCH. THANK

11:34AM 6 YOU FOR YOUR TIME THIS MORNING.

11:34AM 7 MS. WALSH: THANK YOU.

11:34AM 8 THE COURT: MOTION IS UNDER SUBMISSION. THANK YOU.

11:34AM 9 MR. LEACH: THANK YOU.

11:34AM 10 THE COURT: AND WE'RE BACK TOMORROW AT 9:00 I

11:34AM 11 BELIEVE.

11:34AM 12 MR. LEACH: YES, YOUR HONOR.

11:34AM 13 THE CLERK: COURT IS ADJOURNED.

11:34AM 14 (COURT ADJOURNED AT 11:34 A.M.)

15

16

17

18

19

20

21

22

23

24

25

CERTIFICATE OF REPORTER

I, THE UNDERSIGNED OFFICIAL COURT REPORTER OF THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF CALIFORNIA, 280 SOUTH FIRST STREET, SAN JOSE, CALIFORNIA, DO HEREBY CERTIFY:

THAT THE FOREGOING TRANSCRIPT, CERTIFICATE INCLUSIVE, IS A CORRECT TRANSCRIPT FROM THE RECORD OF PROCEEDINGS IN THE ABOVE-ENTITLED MATTER.

A handwritten signature in black ink that reads "Irene Rodriguez". The signature is written in a cursive, flowing style with a large, decorative flourish at the end of the last name.

IRENE RODRIGUEZ, CSR, RMR, CRR
CERTIFICATE NUMBER 8074

DATED: MARCH 29, 2022